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4 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
5 AT SEATTLE

6 IN RE: PHENYLPROPANOLAMINE  
7 (PPA) PRODUCTS LIABILITY  
LITIGATION,

MDL NO. 1407

8 ORDER GRANTING  
DEFENDANTS' MOTION FOR  
9 SUMMARY JUDGMENT

10 This document relates to:

11 Debbie Roberson v. Novartis  
Consumer Health, Inc., et al.  
12 No. 3-cv-0606

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14 Defendant Novartis Consumer Health, Inc. ("Novartis") moves  
15 this court for summary judgment pursuant to Rule 56(c) of the  
16 Federal Rules of Civil Procedure. Specifically, Novartis claims  
17 that plaintiff is unable to establish that she suffered a stroke,  
18 an essential element of her claim. Defendant Pliva, Inc. f/k/a  
19 Sidmak Laboratories, Inc. ("Sidmak") joins in the motion. Having  
20 reviewed the motion, the response filed, and the reply thereto,  
21 the court hereby finds and rules as follows:

22 I. BACKGROUND

23 Plaintiff initiated this action on November 25, 2002 by  
24 filing a Complaint in the United States District Court for the  
25 District of New Jersey. A First Amended Complaint was filed  
26 thereafter. In her Complaint, plaintiff alleges that she suffered

ORDER  
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1 a stroke on October 15, 1992 as a result of ingesting Dexatrim, a  
2 PPA-containing product manufactured by Sidmak, and Triaminic, a  
3 PPA-containing product manufactured by Novartis. Plaintiff  
4 alleged in the Plaintiff's Fact Sheet ("PFS") that the stroke was  
5 diagnosed by her family physician, Dr. Hau P. Dang, on October  
6 16, 1992.

7 Medical records obtained from Dr. Dang's office by  
8 defendants do not show that plaintiff suffered a stroke on  
9 October 15, 1992 (or any other date). The records reflect that  
10 plaintiff was not seen by Dr. Dang on October 16, 1992. Although  
11 plaintiff was seen by Dr. Dang on October 30, 1992, no  
12 cerebrovascular accident is mentioned in the records. In fact, no  
13 where in Dr. Dang's medical records does he diagnose a stroke.

14 Plaintiff later amended her PFS to allege that she was seen  
15 in the Emergency Room at Christus St. Elizabeth Hospital on  
16 October 15, 1992 for treatment of stroke-like symptoms. However,  
17 the medical records obtained from Christus St. Elizabeth Hospital  
18 show that (1) plaintiff was not seen on October 15, 1992, and (2)  
19 she was not diagnosed with a stroke on that date.<sup>1</sup>

## 20 II. ANALYSIS

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22 <sup>1</sup>Since 1992, plaintiff has been seen by a number of  
23 physicians and other healthcare providers, primarily to receive  
24 treatment for asthma. Many of these healthcare professionals  
25 asked plaintiff to recount her medical history. In response,  
26 plaintiff has reported her history of asthma, high blood  
pressure, anxiety, high cholesterol, migraine headaches,  
arthritis, and shortness of breath. But nowhere, in any medical  
history, has plaintiff reported having suffered a stroke.

1           A.     Summary Judgment Standard

2           Summary Judgment is appropriate where "the pleadings,  
3 depositions, answers to interrogatories, and admissions on file,  
4 together with the affidavits, if any, show that there is no  
5 material issue of fact and that the moving party is entitled to  
6 judgment as a matter of law." Fed. R. Civ. P. 56(c). Judgment in  
7 favor of the moving party is mandatory if plaintiff fails to  
8 produce competent evidence to support the existence of an element  
9 required to sustain her cause of action. Celotex Corp. v.  
10 Catrett, 477 U.S. 317 (1986).

11           Despite having ample time for discovery, plaintiff has not  
12 come forward with *one scintilla* of evidence to support the  
13 allegation that she suffered a stroke.<sup>2</sup> Consistent with this  
14 court's prior Daubert ruling, plaintiffs in MDL 1407 must prove  
15 that they suffered a stroke within 72 hours of ingesting a PPA-  
16 containing product. In this case, plaintiff has completely failed  
17 to prove that she suffered a stroke at any time, much less within  
18 72 hours of allegedly ingesting a PPA-containing product. The  
19 only "evidence" offered by plaintiff in opposing this summary  
20 judgment motion, is her counsel's assertion that "[p]laintiff  
21 continues to represent that she suffered a stroke in 1992 as a  
22 result of ingesting a PPA-containing Novartis product."

23 Plaintiff's Response at ¶5. However, such representations alone  
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25           <sup>2</sup>Plaintiff has had over two and a half years to identify and  
26 produce evidence in support of her claim.

1 are insufficient, as a matter of law, to oppose a motion for  
2 summary judgment. Fed. R. Civ. Pro. 56(e) mandates the entry of  
3 summary judgment in favor of the moving party, after adequate  
4 time for discovery, where-as here-the nonmoving party fails to  
5 present evidence sufficient to establish the existence of an  
6 essential element of her case with respect to which she bears the  
7 burden of proof. Celotex, 477 U.S. at 323.

8 III. CONCLUSION

9 Plaintiff has failed to proffer any evidence that she  
10 suffered a stroke, the injury she claims she suffered as a result  
11 of ingesting a PPA-containing product. Proof of an injury is an  
12 essential element of any cause of action against defendants.  
13 Therefore, plaintiff has not, and cannot, establish a prima facie  
14 case for recovery. Accordingly, the court GRANTS the motion for  
15 summary judgment and hereby dismisses plaintiff's case with  
16 prejudice in its entirety.

17 DATED at Seattle, Washington this 13th day of May, 2005.

18   
19 BARBARA JACOBS ROTHSTEIN  
20 UNITED STATES DISTRICT COURT  
21 JUDGE  
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